

BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for Interim  
Suspension Order Against:

HAROLD MARSICEK,

Pharmacist License No. RPH 41845

Respondent.

Case No. 6253

OAH No. 2017110439

**INTERIM SUSPENSION ORDER**

The Petition for Interim Suspension Order (ISO) in this matter was heard by Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings, on December 1, 2017, at Los Angeles, California.

Petitioner Virginia Herold was represented by Leslie A. Walden, Deputy Attorney General.

Respondent Harold Marsicek did not appear, despite proper notice of the proceeding.

The following documents were marked for identification, received in evidence, and considered by the ALJ:

Notice of Hearing on ISO and Petition for ISO with Memorandum of Points and Authorities (Ex.1); and, Petition for Interim Suspension Order, with attached Memorandum of Points and Authorities, and Declarations of Katherine Sill, Florence Wong-Yu, and Virginia Matthews, R.N., with attached exhibits (Ex. 2).

The matter was submitted for decision on the hearing date.

The ALJ hereby makes the following factual findings, legal conclusions, and order. The factual findings that follow were established by a preponderance of the evidence.

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## FACTUAL FINDINGS

### *The Parties and Jurisdiction*

1. Petitioner brought the Petition for Interim Suspension Order (Petition) in her official capacity as Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

2. Respondent Harold Marsicek was issued Pharmacist License Number RPH 41845 on August 3, 1988. At all times relevant Respondent's license was valid, though it was set to expire on November 30, 2017, just prior to the hearing.<sup>1</sup>

3. The Petition for ISO and Notice of Hearing on the Petition for ISO were served on Respondent on November 13, 2017, at his address of record. Jurisdiction to proceed was established.<sup>2</sup>

### *The Events at Respondent's Workplace*

4. Respondent was employed at USC Kenneth Norris, Jr. Cancer Hospital (Norris) from August 1, 1994 until he resigned on July 12, 2017. He worked overnight shifts, which began at 9:00 p.m. on weekdays, and at 7:45 on weekends.

5. On February 8, 2017, Respondent arrived at his workplace, but did not make it into the building. Three co-workers found him lying on the ground in the parking lot. They tried to help him up, but he had trouble standing. He claimed he had diabetes and could not feel his feet. Two of the co-workers smelled alcohol on Respondent's breath. Respondent's wife was called, and she came and picked him up.

6. On March 3, 2017, Respondent did not appear at Norris in time to begin his shift, which started at 9:00 p.m. that day. At 9:50 p.m. his supervisor, Florence Wong-Yu, called him and texted him, but received no answer. Two minutes later she called again, and Respondent's daughter answered and said she was bringing him to work. At just after 11:00 p.m., Ms. Wong-Yu was called by a pharmacy technician at Norris, who said that after hearing a loud noise in the pharmacy, he went inside and found Respondent on his back, unable to get up.

7. At approximately 12:45 a.m. on March 4, 2017, Ms. Wong-Yu determined that Respondent was cognitively impaired and unable to work as a pharmacist. His daughter was

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<sup>1</sup> During the hearing the ALJ stated he would check the Board's website regarding the status of Respondent's license. As of December 5, 2017, it had not been renewed.

<sup>2</sup> The Board retains jurisdiction to proceed in this matter, despite license expiration, pursuant to Business and Professions Code sections 118, subdivision (b) and 4300.1.

called, and she came to pick Respondent up. She was advised to take Respondent to the hospital, and Ms. Wong-Yu told her to tell Respondent to take the next day off.

8. On March 26, 2017, Ms. Wong-Yu learned that Respondent had requested a leave of absence for the period from March 3 to May 26, 2017. She thereafter learned that when Respondent was discharged from the hospital after the March 3-4 incident, he was given a discharge instruction sheet pertaining to Alcohol Use Disorder. She also learned of another hospitalization later in March 2017, and at that time Respondent was provided with discharge instructions on Alcohol Withdrawal Syndrome.

9. At some time between March 3 and March 24, 2017, Respondent disclosed to Norris's human resources staff that he had an alcohol dependency problem, and that he had been referred to a rehabilitation program.

#### *Respondent's Failed Efforts at Rehabilitation*

10. On June 8, 2017, Respondent met with a Board investigator, Katherine Sill. At that time he admitted that during the March 3-4 incident, he had been under the influence of alcohol and 12 mg. of lorazepam, a controlled substance.<sup>3</sup> He could not recall the events of that evening.

11. On June 16, 2017, Respondent completed an intake interview at MAXIMUS Health Services, Inc. (Maximus), for entry into a rehabilitation program that firm runs for pharmacists. Maximus is a vendor to the state, and operates rehabilitation programs for pharmacists and other professionals. During the intake interview, Respondent admitted to working under the influence of Ativan—a brand name for lorazepam—and he stated he was regularly consuming alcohol.

12. Respondent thereafter failed to turn in any of the necessary paperwork, and he was slow to respond to voice messages. He failed to submit to random drug testing. On July 10, 2017, his case was closed and Maximus released him from the rehabilitation program.

13. Given the information that it had about Respondent, Maximus classified him as being in the Public Risk Category, and they referred his case back to the Board.

### LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter exists under Business and Professions Code sections 494, 4003, 4011, 4301, and 4301.1<sup>4</sup> based on Factual Findings 1

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<sup>3</sup> A controlled substance that is often used to treat anxiety disorders.

<sup>4</sup> All further statutory citations are to the Business and Professions Code.

through 3. Under section 494, subdivision (e), the standard of proof to obtain an interim order of suspension is a preponderance of the evidence.

2. To obtain an ISO pursuant to section 494, Petitioner must establish that the licensee has engaged in acts that constitute grounds for discipline under the Code, and that permitting the licensee to continue to engage in the licensed activity, or to do so without some restrictions, would endanger the public health, safety, and welfare.

3. The Board may discipline a licensee for unprofessional conduct, which includes, but is not limited to, violation of any statutes regulating controlled substances and dangerous drugs. It may also discipline a licensee for self-administration of dangerous drugs, or use of dangerous drugs or alcohol in a manner that makes the licensee a danger to him or herself, or others, or in a manner impairing the licensee's ability to safely practice their profession. (§ 4301, subds. (j) & (h).)

4. The evidence establishes that Respondent has self-administered dangerous drugs and controlled substances, at times in combination with alcohol, while acting as a pharmacist. The evidence establishes that he has consumed alcohol and been under its influence while working as a pharmacist. The record establishes that he has used controlled substances, dangerous drugs, and alcohol in a manner that makes him a danger to himself and others, and to an extent that his ability to act as a pharmacist has been impaired. He has therefore violated section 4301, subdivision (h). This conclusion is based on Factual Findings 4 through 11.

5. The Petition asserts other violations of section 4301, such as dishonesty, fraud, and deceit, or violation of statutes and regulations pertaining to the use and control of such substances. From the record, it can not be established how Respondent obtained lorazepam. Findings or conclusions on those allegations are not necessary in light of Legal Conclusion 4.

6. It is obvious that Respondent is severely debilitated by his alcohol dependency. He was twice found at work unable to function because he had consumed alcohol and lorazepam. He utterly failed to move forward with rehabilitation. He is obviously a danger to himself and to the public, as he can not safely practice as a pharmacist. (Factual Findings 4 through 13.)

6. Based on all the forgoing, Petitioner has established cause for the issuance of an ISO, pending a hearing on an accusation.

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7. It is expected that the Board will comply with the requirement to file an accusation against Respondent within 15 days. If Respondent requests it, a full evidentiary hearing will take place.

### ORDER

The Petition for an Interim Order of Suspension is granted against Respondent Harold Marsicek, Pharmacist License No. RPH 41845. Respondent is suspended from practice as a pharmacist pending the outcome of a hearing on an accusation, or otherwise, as set forth in section 494.

December 8, 2017

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*Joseph D. Montoya*  
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Joseph D. Montoya  
Administrative Law Judge  
Office of Administrative Hearings